O/Essen. Supplies/52

1952.

File No. 53/52

Legal Department

G. **BRANCH**

Subject:

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Opinion on the

Essential Supplies (Temporary Powers)

Act 1952

O Essen. Supplies/52

File No. 53/52

Gen. 194 e.

C O N T E N T S.

Legal Department File No. O. Essen. Supplies/1952.

Sr.No.	R.I./D.No.	Subject.	Pages.
		Opinion on the Essential supplies(Tempory Powers) Act, 1946.	
1.	G- 24 14.1.52.	See. 3(2) Question regarding reconsideration of the question of issuing a fresh notification if this Govt.could point out to them specific cases of orders which may be covered under the items enumerated in sub-section (2) of section 3 and fall under sub-section (1) thereof and in respect of which difficulty is likely to arise.	1-4
2	G-124 24-3-52.	Question whether when freezing and defreezing was done under an order issued under sec. 4 of the Bombay Essential Commodities and Cattle (Corntol) Act, 1946 and was done or intended to be done in good faith, no action would lie against Government for damages.	5-10

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Legal Department.

The Government of India are prepared to reconsider the question of issuing a fresh notification if this government could point out to them specific cases of orders which may not be covered under the items enumerated in sub-section (2) of section 3 of the Essential Supplies (Temporary Powers) Act, 1946, and fall under sub-section (1) thereof and in respect of which difficulty is likely to arise.

A copy of the judgment of the High Court , Bombay in Civil Application No. 685 of 1951 filed by Messrs. Anand Milk Products Limited Vs. The District Magistrate, Kaira, may be forwarded to the Government of India and it may be pointed out to them that while construing the notification issued by this Government No. MC/Rev.-325(b)/D, dated the 27 February 1951, the High Court, held that the notification had the effect of prohibiting transport and it was issued under clause (d) of sub-section (2) of section 3 which did not contain power to prohibit but only power to regulate. However in view of the general powers conferred in sub-section (1) of section 3 the notification was held to be valid. An objection then would have been raised that all the powers under sub-section (1) were not delegated to the State Governments but only these that were enumerated in sub-section (2) of section 3 and that had it been so raised it would have been difficult to support the validity of the notification. The recent decision of the Supreme Court in the case of Santosh Kumar Jain Vs. State from Patna reported in Supreme Court Journal 1951 Vol. XIV page 291 was referred to by their Lordships in the above judgment as a similar question of an order being beyond the scope and ambit of section 3(2)(j) but valid under sub-section (1) of section 3 was considered in that case. As pointed out in that case the particulars mentioned in sub-section (2) are merely illustrative and that it is sub-section (1) itself which is the principal provision. If as admitted by the Government of India that it was not the intention to give delegation in a restricted manner, it stands to reason that the -- delegation should be under the main or principal section rather than under sub section

(2) which is merly illustative. The Civil Supplies Department may therefore again write to the Government of India with reference to paragraph 2 of their letter at page 17 and request them to issue a fresh notification delegating powers under section 3 generally in supersession of the present notification.

Id/- .....

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Additional Secretary to Government.

U.R. to C.S.D., No. G- 24, dated the 14th January 1952;

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27-7-56. 4c.

Office of the R. L. A.

As the freezing and de-freeging was done under an order issued under section 4 of the Bombay Essential Commodities and Cattle (Control) Act, 1946 and as it was done or intended to be done in good faith, no action would lie against Government for damages in view of the provisions of section 15 of that Act.

Id/- .....
24/3
Remembrancer of Legal Affairs.

U.R. to C.S.D., No. G-124, dated the 24th March 1952.

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27.7.56. 4c.